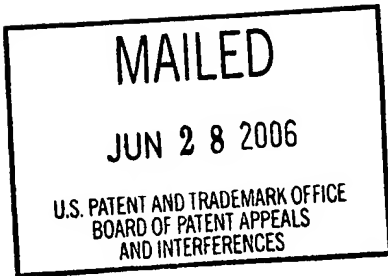


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GERT CALLIES, TILMANN SCHMIDT-SANDTE, and THOMAS WAWRA

Application No. 10/798,116

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on June 27, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

Appellants' brief filed January 6, 2006 is defective for the following reason(s):

- (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any by reference characters, and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph,

and/or (2) set forth the structure, material, or ads described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

Correction is required.

Also, the Examiner's Answer mailed April 3, 2006 does not list the prior art of record being relied upon in the rejections. Page 2 of the examiner's answer contains a section heading titled "**(8) Evidence Relied Upon**" that states "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal" beneath it. The Manual Of Patent Examining Procedure (MPEP) § 1207.02(A) (8th ed., Rev. 3, August 2005) defines the above heading as follows:

(8) Evidence Relied Upon. A listing of the evidence relied on (e-g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

The examiner's § 102(b) rejections are based on the abstracts and figures of Japanese patents to Yoshitaka Goto, et al. (JP 708155670) and Nobuyuki et al. (JP 06000684) and as such, these references should be (have been) listed under the "(8) Evidence Relied Upon" heading in the examiner's answer. Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner

- a.) to hold the Appeal Brief filed January 6, 2006, defective and notification to appellants to file a substitute Appeal Brief correcting the deficiency noted above;
- b.) for consideration of the substitute Appeal Brief,

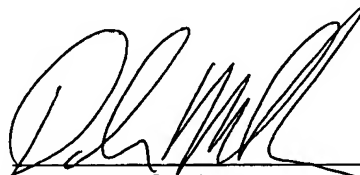
Application No. 10/798,116

c.) to vacate the Examiner's Answer mailed April 3, 2006, and to issue a revised Examiner's Answer listing under the appropriate heading, the prior art of record being relied upon in the rejection(s) of the appealed claims, and noting the substitute appeal brief, and

d.) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



DALE M. SHAW
Chief Deputy Appeals Administrator
(571) 272-9797

DMS/vsh

cc: KENYON & KENYON LLP
ONE BROADWAY
NEW YORK NY 10004